

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3893 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO.LTD.

Versus

CHANDAN DAVID PARAPURATHU NARAYANI

Appearance:

MR KK NAIR for Petitioners
MR SANDEEP N BHATT for Respondent No. 1
DELETED for Respondent No. 2
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE M.C.PATEL

Date of decision: 25/11/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellants have challenged the award dated
9th July, 1997 made by the Motor Accident Claims Tribunal
(Aux.), Bhuj at Kutch in M.A.C.T No. 98/90, by which the

original claimant - mother of the deceased has been awarded a sum of Rs. 3 lacs by way of compensation, with interest and cost.

2. The deceased P.K. Rajendran, who was appointed by order dated 5th July, 1989 as a Clerk-II on regular basis in the All India Radio, Bhuj at Kutch in the pay-scale of Rs. 950-20-1150-EB-25-1500 plus other allowances admissible under the Rules, unfortunately died due to an accident that took place on 6.7.1989 while he was returning after his first day's service in the evening at 8.00 P.M on the public road while he was proceeding towards bus station from the Panchayat Office. The death was caused as a result of the impact of the motor vehicle driven by the original opponent No.1. The Tribunal, on the basis of the material on record, came to a finding that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. The driver of the vehicle did not enter the witness box. The deceased was at the relevant time walking on his left side of the road and the vehicle (tempo) driven by the original opponent No.1, dashed against him from the rear when the driver was not able to control the same due to excessive speed, causing severe injuries to the deceased who succumbed on the next day.

The learned Counsel for the appellants submitted that the appellants were not questioning the finding as regards the negligence of the driver of the tempo. We find from the reasoning of the Tribunal that it has correctly reached the finding on the question of negligence by holding that the tempo driver had driven the vehicle rashly and negligently, resulting in the accident.

3. The only contention that the learned Counsel for the appellants raised before us is that the claimant mother was 45 years of age and the multiplier of 17 which was applied, was excessive. According to the learned Counsel, the multiplier should have been 12 or 13 at the most. It was also submitted that the mother was not solely dependent on the deceased son and that there were other sons who were settled abroad and would have looked after the mother.

There is no dispute about the fact that the deceased was appointed as a Clerk in the pay-scale of Rs. 950-1500 plus other allowances under the order dated 5th July, 1989, which is at Ex.70. The salary certificate Ex.71 shows that at the time of his initial appointment, his total salary was Rs. 1,346/- per month. The

claimant mother in her deposition had stated that she was dependent on this son, who was at the time of the accident, 24 years of age as per the birth-date reflecting from his Secondary School Leaving Certificate at Ex.69. The Tribunal, on the basis of the monthly income of the deceased at Rs. 1,346/- as on the date of the accident, worked out the actual loss of income and dependency from the existing pay at Rs.91,528/- and also worked out loss of future income at Rs. 2,40,000/- by holding that he would have reached the higher pay upto Rs. 3,700/- and thus, would have had an additional income of Rs. 1500/- per month over and above what he was already getting. On this count, the dependency was worked out at Rs. 12,000/- per year. The Tribunal, applied the multiplier of seventeen. The total loss of dependency was thus, worked out at Rs. 2,95,528/-. Adding other amounts under the heads of pain and suffering, miscellaneous expenses etc. the total amount payable was worked out at Rs. 3,32,528/-. However, since the claim was restricted to Rs. 3 lacs, only that much amount was awarded.

4. As regards the original claimant - mother having other sons, there does not appear to have been any argument canvassed before the Tribunal on that basis that she was supported by them. We asked the learned Counsel appearing for the appellants whether any such contention was raised by them before the trial Court and he very fairly submitted that no such contention was raised. He however, pointed out that in his cross-examination the other son who was the original claimant No.2, had stated that on the date of the deposition, the mother was dependent on him. The elder son of the claimant was working in Dubai and the other son in America, as stated by the learned Counsel. It is therefore, obvious that in India she would have depended only on this son. We do not want to enter into any conjectures whether she would have gone abroad and stayed with other sons. We find that the younger son was liable to look-after her and therefore, the award given to her on the ground of dependency is justified.

5. There can be no dispute about the proposition that the age of the dependent would also be a relevant consideration for ultimately working out the dependency by applying a suitable multiplier. The deceased was a Central Government employee and the pay-scale, as we notice from the revised pay-scale applicable to those who were in the pay-scale of 950-1500 in the Ministry of Information and Broadcasting, was raised to 4000 - 100 6000 with effect from 1.1.96. Therefore, apart from the

question of the deceased getting his regular increments and promotions, the fact that under the report of the Fifth Pay Commission, the pay-scale of the deceased was revised, cannot be ignored. We may refer to the decision of the Hon'ble Supreme Court in the case of New India Assurance Company Ltd. Vs. Kala Devi, reported in 1996 ACJ 16, in which, in a case where the accident had taken place on 11.4.1967 and the Tribunal had awarded Rs. 9,780/-, the Supreme Court up-held the decision of the High Court enhancing the compensation to Rs. 1,25,000/on the ground that the pay-scale of the post held by the deceased were revised by the Third Pay Commission. We derive support from this decision for our conclusion and having regard to the fact that the revised pay-scale from 1.1.1996 was Rs.4000-6000 and that this upward pay revision has not been taken in to consideration by the Tribunal, we are of the view that even if a slightly higher multiplier of 17 is applied to work out the dependency, the total figure which is arrived at calls for no interference by this Court. In our opinion the amount which has been awarded is just and proper. The appeal is, therefore, summarily dismissed. Interim relief stands vacated.

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